**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD**

**HON'BLE Mr. JUSTICE R. SUBHASH REDDY**

**Writ Petition No.26915 of 2005**

**Dated: December 31, 2007**

**Between:**

Sandvik Smith Asia Limited, Muthangi village, Patancheru Mandal, Medak District, rep. by its Manager, Finance & Legal Mr. V.G. Sharma.

… Petitioner

And

Chief Controlling Revenue Authority, Registration and Stamps Department, Govt. of Andhra Pradesh, Hyderabad, and others.

… Respondents

## Order:

The petitioner, a company registered under the Companies Act, 1956, filed this writ petition seeking the following reliefs:

> " a) to issue a Writ of Certiorari or any other appropriate Writ, order or direction to call for the records relating to the orders of the 2nd respondent in Order No.G1/772/2005 dated 15-3-2005 and the order dated 9/8/2005 passed by the

1st respondent and to go into the legality and propriety thereof and to quash and or set aside the same.

b) to issue a Writ of Mandamus or any other appropriate Writ, order or direction to direct:

i) the 1st respondent to state the case and refer the questions to this Hon'ble Court for determining the same.

ii) the 2nd respondent to levy the stamp duty only on the value of the immovable property transferred as determined from the Basic Value Register insofar as the land and structures are concerned and on the basis of the book value in respect of the machinery is concerned."

2. Facts of the case, in brief, are as follows:

The petitioner, a group company, entered into Business Purchase Agreement dated 20-02-2004 with another company by name Kennametal Widia India Limited, whereunder the mining and construction division of the said company, situated at Patancheru, Medak District, was agreed to be purchased as an on-going concern for a lumpsum consideration of Rs.64,90,40,000/-. In terms of the said agreement, the total consideration was to be paid in two instalments, i.e. Rs.55,63,20,000/- - which was paid by the petitioner to the vendor company at the time of handing over possession and the balance consideration of Rs.9,27,20,000/- was agreed to be paid at the time of conveying marketable title of the said property. The said agreement was presented for registration on 25-05-2004 before the third respondent, Sub-Registrar, Sanga Reddy. For the purpose of stamp duty payable under the provisions of the Indian Stamp Act, 1899 (for short 'the Act') the petitioner has assessed the value of immovable

property at Rs.3,51,14,884/-, which is shown in the split-up figures as under:

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|---|---|---|
| Land | : | Rs.64,10,650/- |
| Permanent Buildings | : | Rs.2,60,04,695/- |
| Shed | : | Rs.6,20,873/- |
| Permanently Embedded Plant and machinery | : | Rs.20,76,666/- |

As the said agreement was coupled with delivery of possession, the petitioner paid stamp duty at 6% on the immovable property and valued the same for the purpose of stamp duty and paid stamp duty of Rs.21,06,900/- and registration fee of Rs.1,75,575/-. There was an objection with regard to stamp duty paid by the petitioner, as the same was not paid on the total value of Rs.64,90,40,000/-. The petitioner filed an application on 09-06-2004 seeking opinion on the chargeability of the stamp duty as contemplated under Section 31 of the Act. The second respondent disposed of the said application by order dated 15-03-2005 by recording his opinion to the effect that the stamp duty is to be levied as per Article-47 (Explanation-I) of the Schedule I-A of the Act at the rate of 6% on the total consideration of Rs.64,90,40,000/- shown in the Business Purchase Agreement dated 20-02-2004. During the pendency of the proceedings before the second respondent, conveyance deed in respect of the said property was executed by the vendor in favour of the petitioner on 11-03-2005 and it was also presented for registration on 21-03-2005 by tendering the balance stamp duty and registration fee of Rs.19,20,860/- and Rs.1,83,080/- respectively, before the second respondent. However, as the said document was also not evidenced by stamp duty on the total value consideration shown in the deed, it was kept pending vide document No.P19/05. After the order dated 15-03-2005 passed by the

second respondent was served on the petitioner, petitioner filed an application on 26-05-2005 before the first respondent, Chief Controlling Revenue Authority, Registration and Stamps Department to refer the questions raised by him to this court for opinion. In his application dated 26-05-2005, he sought reference of the following aspects:

i) Whether in the case of the slump sale involving immovable property, movables (which are transferred by mere delivery) and intangible property like goodwill, the entire consideration is liable to stamp duty under Entry 47A of Schedule 1A of the Stamp Act?

ii) Whether in a slump sale involving immovable property, movables and intangible property, the stamp duty under Entry 47a of Schedule 1A has to be limited to the value of only the immovable property comprising of land, buildings standing thereon, sheds and plant and machineries permanently embedded in the earth?

iii) Whether in a slump sale involving immovable property, movables and intangible property where no separate values are assigned to the immovable property, the stamp duty under Entry 47A of Schedule 1A, is payable on the basis of value of the immovable property (i.e. land, buildings standing thereon and sheds) as per the Basic Value Register?

However, the Chief Controlling Revenue Authority, Registration and Stamps Department, by the impugned order dated 04-08-2005 (mentioned in the writ petition as 09-08-2005) rejected the said application with the following endorsement:

" With reference to the appeal cited, it is informed that U/s 57 of I.S. Act the Chief Controlling Revenue

Authority is not empowered to allow the appeal.

Hence the appeal preferred by you U/s 57 is hereby rejected and the concerned records are returned herewith."

In view of rejection of its request, for reference, the petitioner has approached this court.

3. The case of the petitioner is that the lumpsum consideration arrived at for purchase is under a lumpsum sale as an on-going project for a lumpsum consideration of Rs.64,90,40,000/-. It is stated that the consideration is not only for immovable property, i.e. land, buildings, embedded machinery etc., but also for movables, tangibles, intangibles etc. It is stated that the value was arrived at by strategic synerging of all the ingredients of the business venture, and, in that view of the matter, the stamp duty was payable only on the immovable properties which are shown in the annexure. It is stated that in the case of such purchase, where lumpsum consideration is arrived at, stamp duty is payable only on immovable properties, i.e. land, buildings, embedded machinery etc. and, hence, there is no reason or justification on the part of the respondents in insisting payment of stamp duty on the entire value shown in the Business Purchase Agreement dated
20-02-2004. Precisely, the case of the petitioner is that as the value was arrived at for the unit under a lumpsum sale, even in the absence of split-up figures, stamp duty has to be charged, confining only to immovable properties mentioned in the agreement. It is the case of the petitioner that though important questions arise for consideration for reference, however, the first respondent has not considered the application dated 20-05-2005 and simply rejected it by misconstruing it as an appeal filed against the opinion rendered by the second

respondent, under Section 31 of the Act.

4. Respondent No.2 has filed counter affidavit, generally, denying the allegations of the petitioner. It is stated that the petitioner has filed an application under Section 31 of the Act for adjudication of document and for an authoritative opinion regarding the chargeability of the stamp duty of the document, which is styled as “Business Purchase Agreement” between Kennametal Widia India Limited (seller) and Sandvik Smith Asia Ltd. (buyer) and after perusing the said agreement dated 20-02-2004, the second respondent has given an authoritative opinion under Section 31 of the Act informing that the stamp duty is chargeable on the total purchase price of Rs.64,90,40,000/- through which the agreement was made and accordingly the same was informed.

In the counter affidavit, it is further stated that the whole transaction has to be treated as a single transaction for various items mentioned in the Business Purchase Agreement (with possession) and the stamp duty has to be levied as per Article 47-A Explanation-I of Schedule 1-A of the Act at 6% on the consideration of Rs.64,90,40,000/-. With reference to the application filed before the first respondent, it is stated that as there is no doubt as to the amount of duty to be charged, as it was determined by the District Registrar and Collector, as such, the question of referring the case under Section 56 of the Act. It is stated that as much as the petitioner himself has given the value of the property in the agreement dated 20-02-2004, in absence of any doubt with regard to the chargeability of the stamp duty, reference, as sought by the petitioner, need not be referred. It is stated that Article 47-A Explanation-I of Schedule 1-A of the Act clearly defines how the stamp duty is to be collected on such sales. The stamp duty is to be collected on the amount or the value of the consideration for such sale as set

forth in the instrument or the market value of the property which is the subject matter of the sale whichever is higher. It is also stated in the counter affidavit that the orders passed by the second respondent seeking opinion with regard to chargeability on the document under Section 31 of the Act is not an appealable order; hence prayed for dismissal of the writ petition.

5. Heard Sri E.P. Barucha, learned Senior Counsel, appearing for the petitioner, on behalf of Sri S. Niranjan Reddy and also learned Government Pleader for Revenue appearing for respondents.

6. Learned Senior Counsel appearing for the petitioner submits that as much as the agreement entered into between the petitioner and Kennametal Widia India Limited is a Business Purchase Agreement, as an ongoing project and the value of the immovable property, i.e. Land, Permanent Buildings, Shed and Permanently Embedded Plant and machinery is arrived at on a lumpsum basis, the stamp duty is payable on the immovable properties which is clearly shown in the Business Purchase Agreement; however, respondents have not accepted the stamp duty for the purpose of registering the document. He further submits that the questions involved with regard to payment of stamp duty are substantial issues and in spite of bringing the same to the notice of the Chief Controlling Revenue Authority, instead of referring such questions to this court, he has simply rejected the application by misconstruing the same as an appeal filed against the orders passed by the second respondent on the application filed under Section 31 of the Act. It is submitted that when it was brought to the notice of the first respondent regarding the questions to be referred to this court, a duty is cast on him to refer such questions to this court for opinion with regard to chargeability of the stamp duty on the said

document; however he has refused to do so without assigning any valid reasons. Learned counsel for the petitioner, in support of his arguments, has placed reliance on the judgments in **Banarasi Dass Ahluwalia Vs. The Chief Controlling Revenue Authority, Delhi**[1], **The Chief Controlling Revenue Authority and another Vs. The Maharashtra Sugar Mills Ltd. - Respondents**[2] and **M/s. Sudarshan Talkies (Delhi) Pvt. Ltd. Vs. The Chief Controlling Revenue Authority, Delhi**[3]

7. On the other hand, it is submitted by learned Government Pleader appearing on behalf of the respondents that in the instant case, total value of the consideration is Rs.64,90,40,000/-; hence, the stamp duty levied, is in accordance with Article-47 (Explanation-I) of the Schedule
I-A of the Act, as applicable in the State of Andhra Pradesh. It is submitted that as the petitioner has not given any split-up figures with regard to immovable properties in the Business Purchase Agreement, the stamp duty is payable on the total sale consideration of
Rs.64,90,40,000/-, shown in the document. It is also submitted that with regard to reference provided under Section 57 of the Act, it is not for the petitioner to seek reference in the absence of any reference by the District Registrar as contemplated under Section 56 of the Act. It is further submitted that as much as the District Registrar has also rendered his opinion under Section 31 of the Act and it is not an appealable order before the Chief Controlling Revenue Authority, as such, there is no illegality or irregularity in the order passed by the second respondent. Learned Government Pleader has placed reliance on the judgment of **P. Balakrishnan Vs. The District**

**Registrar**[4] and another judgment of a learned single Judge of this court in **State Bank of Hyderabad Vs. Government of Andhra Pradesh**[5]**.**

8. Before adverting to the various contentions of the learned counsel for the parties, it is appropriate to refer to certain relevant provisions of the Act. Chapter-III of the Indian Stamp Act deals with adjudication as to stamps.

Section 31 of the Act reads as follows:

> **31. Adjudication as to proper stamp:-** (1) When nay instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount not exceeding fifteen rupees and not less than five rupees as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.
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> (2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly.

9. Section 3 of the Act is a chargeable section under the Act. It says that all the documents are liable to duties under the Act. Article 47-A and Schedule-I A provide stamp duty payable in case of sale as

defined under Section 54 of the Transfer of Property Act, 1982 and as per Article-47 (Explanation-I) of the Schedule I-A of the Act, an agreement of sale followed by evidencing delivery of possession of the property agreed to be sold shall be chargeable as a “Sale” under this Article. As per the proviso to explanation, after entering into agreement of sale, where subsequently a sale deed is executed in pursuance of an agreement of sale as aforesaid or in pursuance of an agreement referred to in Clause (b) of Article 6, the stamp duty, if any, already paid or recovered on the agreement of sale be adjusted towards the total duty leviable on the sale deed.

10. Sections 56 and 57 of the Act read as follows:

> **56. Control of, and statement of case to, Chief Controlling Revenue Authority:-** (1) The powers exercisable by a Collector under Chapter IV and Chapter V and under Clause (a) of the first proviso to Section 26 shall in all cases be subject to the control of the Chief Controlling Revenue Authority.
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> (2) If any Collector, acting under Section 31, Section 40 or Section 41 feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority.
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> (3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision**.**
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> **57. Statement of case by Chief Controlling Revenue Authority to High Court:-** (1) The Chief Controlling Revenue Authority may state any case referred to it under Section 56, sub-section (2) or otherwise coming to its notice, and refer such case, with its own opinion thereon,-
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> (a) if it arises in a State, to the High Court for that State.

(b) to (g) ------

**57(2).** Every such case shall be decided by not less than three Judges of the High Court to which it is referred, and in case of difference, the opinion of the majority shall prevail.

11. From a perusal of the provisions referred above, it is clear that Section 31 contemplates only adjudication as to proper duty when the opinion is sought. To have such an opinion, any person can apply even before the execution or thereafter. But, however, the provisions under Section 56 and 57 are altogether different which provide reference and revision. Under Section 56 of the Act, if the Collector, exercising powers under Sections 31, 40 or 41, feels doubt as to the amount of duty with which any instrument is chargeable, in such an event, he can refer the matter for the decision of the chief controlling revenue authority. Under Section 57 of the Act, the chief controlling revenue authority, in a case which arises for reference under Section 56(2) of the Act, or otherwise, coming to its notice, can refer the case to this court to have an opinion in case of any doubt with regard to chargeability of the duty. In the instant case, at first instance, the application was filed before the District Registrar to have an opinion on the stamp duty. The said authority, in its order dated 15-03-2005, by recording a finding that there is no separate value for the immovable properties which are subject matter of the business purchase agreement, has opined that the stamp duty is to be levied under Article-47 (Explanation-I) of the Schedule I-A of the Act at 6% on the total consideration shown, i.e. Rs.64,90,40,000/-. But, however, subsequently, by application dated 20-05-2005, the petitioner sought reference under Section 57 of the Act on the questions, namely:

iv) Whether in the case of the slump sale involving immovable property, movables (which are transferred by mere delivery) and intangible property like goodwill, the entire consideration is liable to stamp duty under Entry 47A of Schedule 1A of the Stamp Act?

v) Whether in a slump sale involving immovable property, movables and intangible property, the stamp duty under Entry 47a of Schedule 1A has to be limited to the value of only the immovable property comprising of land, buildings standing thereon, sheds and plant and machineries permanently embedded in the earth?

vi) Whether in a slump sale involving immovable property, movables and intangible property where no separate values are assigned to the immovable property, the stamp duty under Entry 47A of Schedule 1A, is payable on the basis of value of the immovable property (i.e. land, buildings standing thereon and sheds) as per the Basic Value Register?

12. On such application, further impugned order is passed by the chief controlling revenue authority rejecting the application, stating that the chief controlling revenue authority is not empowered to allow the appeal. The application filed is an independent application bringing to the notice of the Chief Controlling authority on the questions raised in the application for seeking reference to this Court. It was not an appeal filed as termed in the impugned order dated 04-08-2005.

13. Though it is submitted by learned Government Pleader appearing for respondents that the reference which is provided under Sections 56 and 57 of the Act is a discretion of the authority and there

is no obligation to refer the matter merely because reference is sought for, but, however, in the case of *Banarasi Dass Ahluwalia* (1 supra), the Hon'ble Supreme Court has held that under Section 57 of the Act, it is an imposed duty on the authority to state a case and refer the same when it raises questions of law. It is held that Section 57 offers a remedy to the citizen to have his case referred to the High Court against the order of chief controlling revenue authority imposing stamp duty and/or penalty, provided the application involves substantial questions of law. In the aforesaid judgment, it is held that when a reference has been made to the authority or the case has otherwise come to its notice, if an application is made under Section 57(1) of the Act and it involves substantial question of law, whether the case is pending or not, the authority is bound to state the case in compliance with its obligation. So also in the case of *The Chief Controlling Revenue Authority and another* (2 supra), the Hon'ble Supreme Court has held that the power contained in Section 57 is in the nature of an obligation, coupled with a duty and in given circumstances, it can be demanded to be used also by the parties affected by the assessment of the stamp duty. The same view is also taken in the further judgment relied on by the learned counsel for the petitioner, in the case of *M/s. Sudarshan Talkies* (3 supra). The learned Government Pleader has placed reliance in the case of *P. Balakrishnan Vs. The District Registrar* (4 supra). But, however, in the said case, there was a dispute with regard to nature of the deed, so as to whether a deed presented for, was a release deed or a deed for partition. In that context, it was held that it need not be referred under Section 56(1) of the Act. But, however, in the case on hand, the respondent-authority did not consider the application filed by the petitioner on 20-05-2005 in proper perspective. When it is brought to the notice of the authority by

filing an application, a duty is caste on the said authority to examine the same at least to the extent whether any questions will arise for consideration for reference under Section 57 of the Act. The power under Section 57 of the Act is not confined to reference made by the authority under Section 56 of the Act. But, a reading of the provision under Section 57 of the Act makes it clear that even when it is brought to the notice of the chief controlling revenue authority by any affected party, the matter can be referred to this court. Though the application filed by the petitioner dated 20-05-2005 is seeking reference on some questions, but, however, the same is simply rejected, construing the same as an appeal. The application dated 20-05-2005 is not an appeal against the opinion dated 15-03-2005. It is an independent application seeking reference. At the same time, it is to be further examined, whether the petitioner is entitled to seek reference. Reference which is provided under Section 57 of the Act is not automatic on mere application of the affected party. The matter can be referred only in the event of arising of any substantial questions with regard to chargeability of the stamp duty under the provisions of the Act. Merely because a reference is sought, in all cases, it need not be referred to by the chief controlling revenue authority. Whether any substantial questions for reference arise or not, will depend on the construction of a document, which is presented for the purpose of stamp duty and registration.

14. Though it is submitted by learned counsel for the petitioner that it is a conjoint agreement and the consideration is arrived at on lumpsum basis, but, however, there is no separate valuation adopted in the business purchase agreement on the alleged immovable properties. In any event, this court need not record any finding on the said aspect as the chief controlling revenue authority has not gone into the said

aspects. It is for the said authority to consider the same. The argument of the learned Government Pleader appearing for the respondents that reference provided under Section 57 is at the sole discretion also cannot be accepted in view of the decisions relied on by the learned counsel for the petitioner referred supra.

15. As much as the chief controlling revenue authority has not considered the application of the petitioner dated 20-05-2005 and the same was disposed of simply on the wrong premise that the same is an appeal filed by the petitioner against the order of the opinion passed by the District Registrar under Section 31 of the Act, it is evidently a fit case for reconsideration by the chief controlling revenue authority. Though the validity of the opinion dated 15-03-2005 is also questioned in the writ petition, but, however, as the arguments of the learned counsel for the petitioner were confined only to the validity of the order dated 04-08-2005, I set aside the order dated 04-08-2005 and direct the first respondent to consider afresh the application dated 20-05-2005 and pass appropriate orders. The first respondent shall consider the application by examining whether any questions arise for reference as contemplated under Section 57 of the Act. It is made clear that this court has not expressed any opinion on merits of the application and it is open for the first respondent-chief controlling revenue authority to examine the same on its own merits, uninfluenced by any observations of this court in this order.

16. The writ petition is party allowed to the extent indicated above. No order as to costs.

**JUSTICE R. SUBHASH REDDY.**

December 31, 2007
**MRR**

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[1] **1968 (1) SCR 685 = AIR 1978 SC 497**

[2] **AIR 1950 SC 218**

[3] **AIR 1978 DELHI 162**

[4] **AIR 1989 MADRAS 257**

[5] **2005 (2) ALD 801**